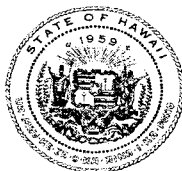


LINDA LINGLE  
GOVERNOR

AARON S. FUJIOKA  
ADMINISTRATOR



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STATE PROCUREMENT OFFICE**

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June 16, 2003

**PROCUREMENT DIRECTIVE NO. 2003-01**

TO: All Chief Procurement Officers  
All Executive Department Heads

FROM: Aaron S. Fujioka, Administrator  
State Procurement Office

SUBJECT: Implementation of Act 52, SLH 2003 (SB 1262, CD1)

The purpose of this circular is to summarize the requirements of Act 52 and issue guidelines for its implementation.

**Summary of Act 52, SLH 2003:**

**Section 2.** Adds a new section to Chapter 103D on Pre-bid conference  
Requires a pre-bid conference for construction or design-build projects under §103D-302 totaling \$500,000 or more; and under §103D-303 totaling \$100,000 or more.

**Section 3.** Amends §103D-206, Additional duties of the administrator of the procurement office.

Adds to the responsibility of the Administrator to establish and maintain a procurement institute in cooperation with the William S. Richardson School of Law, to promote and develop procurement education and training.

**Section 4.** Amends §103D-303, Competitive sealed proposals  
Includes a request for debriefing process for non-selected offerors.

**Section 5.** Amends §103D-304, Procurement of professional services  
Amends the name of the "screening" committee to the "selection" committee; the requirement for members of the review and selection committees shall consist of a minimum of "three employees from the agency or from another governmental body" is amended to "three persons"; provides that the selection criteria employed by the selection committee shall be in descending order of importance; provides that the selection committee shall determine in writing any additional criteria used in the evaluation process;

provides that the ranking of offerors shall be determined by the selection committee rather than by the head of the purchasing agency; the requirement for all professional service contracts to be posted electronically was amended to require only contracts \$5,000 or more; includes a request for debriefing process for non-selected offerors; and provides that design professional services furnished by licensees under chapter 464, HRS, shall only be procured pursuant to §103D-304 (excluding the small purchase process) or §103D-307, HRS.

Note: Design professional services can no longer be procured as a small purchase under §103D-305, HRS. The §103D-304 (f), (g), (h), HRS, selection committee process shall be used. §103D-307, HRS, shall be used for emergency design professional services \$25,000 or more.

**Section 6. Amends §103D-310, Responsibility of offerors**

Adds provisions for all offerors, upon award of a contract, to comply with Chapters 237 (general excise tax); 383 (employment security); 386 (workers compensation); 392 (temporary disability insurance); and 393 (pre-paid health care); and shall be incorporated or organized under the laws of the State, or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

**Section 7. Amends §103D-701, Authority to resolve protested solicitations and awards**

Includes the provision for a request for debriefing.

**Section 8. Repeals §103D-1007, Preference to bidders on state agency contracts**

## **Implementation of Act 52 (July 1, 2003):**

The Procurement Policy Board is in the process of adopting Interim Hawaii Administrative Rules to implement the requirements of Act 52. However, the rules will not be ready for distribution until after July 1, 2003.

In order for all purchasing agencies to be in compliance with the July 1, 2003 effective date of Act 52, the following guidelines are provided:

- Procurements pursuant to §§103D-302 and 103D-303, HRS, solicited (legal advertised date) before July 1, 2003, are exempt from Act 52 requirements.
- Procurements for professional services pursuant to §103D-304, HRS, solicited (legal advertised date), and if persons are determined to be most qualified by a committee before July 1, 2003, are exempt from Act 52 requirements even though the award is subsequent to July 1, 2003. However, if the selection committee evaluates persons on or after the July 1, 2003 effective date of this Act, then the requirements of Act 52 shall apply.
- All §103D-304, HRS, professional service awards for \$5,000 or more are to be posted electronically within seven days of the award. This is a change. All §103D-304, HRS, awards previously required posting.

Should there be any questions, please call me at (808) 587-4700 or your staff may contact:

Justin Fo (586-0577), [justin.fo@hawaii.gov](mailto:justin.fo@hawaii.gov);

Ruth Yamaguchi (585-0567), [ruth.yamaguchi@hawaii.gov](mailto:ruth.yamaguchi@hawaii.gov); or

Bob Governs (586-0554), [robert.governs@hawaii.gov](mailto:robert.governs@hawaii.gov).

Attach. Act 52, SLH 2003 (SB1262, CD1)

Honolulu, Hawaii

*April 25*, 2003

RE: S.B. No. 1262  
S.D. 1  
H.D. 1  
C.D. 1

Honorable Robert Bunda  
President of the Senate  
Twenty-Second State Legislature  
Regular Session of 2003  
State of Hawaii

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Second State Legislature  
Regular Session of 2003  
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1262, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend various provisions of the state procurement code.

Your Committee on Conference met numerous times to discuss the differences between the House and Senate versions of this measure before reaching agreement. Your Committee on Conference used the S.D. 1 version of this measure as a base to prepare the C.D. 1 version, incorporating the amendments discussed below.

Your Committee on Conference amended the pre-bid conference provisions of this measure to require a pre-bid conference for all construction or design-build projects with a total estimated



contract value of \$500,000 or more that are awarded pursuant to competitive sealed bidding, and for all such projects with an estimated value of \$100,000 or more awarded through a request for proposals. Your Committee on Conference also amended the language to clarify that only one pre-bid conference is required.

In addition, your Committee on Conference inserted a provision to require the head of the purchasing agency to invite all potential interested subcontractors and union representatives to attend the pre-bid conference.

Your Committee on Conference also included language from the H.D. 1 version of this measure to authorize nonselected offerors and nonselected professional service providers to request a "debriefing" prior to filing an official protest. Rather than include the language in section 103D-701, Hawaii Revised Statutes (HRS), your Committee on Conference inserted the language directly into sections 103D-303 and 103D-304, HRS. Your Committee on Conference also amended section 103D-701, HRS, to make the protest timeframe consistent.

Your Committee on Conference retained the language from the S.D. 1 version regarding procurement of professional service providers, but added language to give the purchasing agency greater flexibility when awarding professional service contracts for less than \$25,000, and to require the head of the purchasing agency to document the reason if a contract is not successfully negotiated with the first or second ranked person on the list. Your Conference Committee also included language to require electronic posting of every professional service contract awarded for more than \$5,000, rather than \$25,000.

Your Committee on Conference amended the "offeror responsibility" provisions to address constitutionality concerns. As amended, offerors still must demonstrate compliance with Hawaii employment laws, but only once they are awarded a contract. In addition, offerors must be incorporated or organized under the laws of the State of Hawaii or must register a separate branch or division in the State that is capable of fully performing under the contract.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1262, S.D. 1, H.D. 1, as amended herein, and recommends



CCR92

**Bill/Concurrent Resolution No.:**

Date/Time:

04/25/03

1:30 pm

- ☒ The recommendation of the House and Senate managers is to pass with amendments (CD).

- ☐ The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure.

- ☐ The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.

Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
KAWAMOTO, Cal (Chair)	✓				HIRAKI, Kenneth T. (Co-Chr)	✓			
ADUJA, Melodie Williams	✓				MAGAOAY, Michael V. (Co-Chr)	✓			
ESPERO, Willie C.	✓				HERKES, Robert N.	✓			
SAKAMOTO, Norman				✓	MEYER Colleen R.				✓
WHALEN, Paul				✓					
TOTAL	3			2	TOTAL	3			1

E = Excused

☒ ~~Adopted~~

☐ Not Adopted

☒ Adopted

☐ Not Adopted

Lead Chair's or Designee's Signature: \_\_\_\_\_

House Lead Chair's or Designee's Signature: \_\_\_\_\_

**Distribution:** Original -Lead Chair of Originating House  
Pink - Senate Clerk's Office

Blue - Drafting Agency  
Yellow - House Clerk's Office


that it pass Final Reading in the form attached hereto as S.B.  
No. 1262, S.D. 1, H.D. 1, C.D. 1.

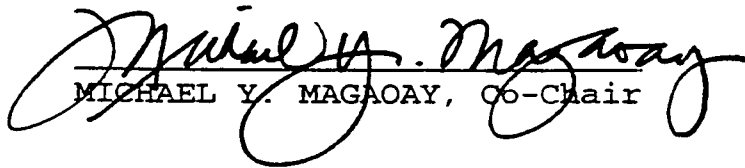
Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

  
KENNETH T. HIRAKI, Co-Chair

  
CAL KAWAMOTO, Chair

  
MICHAEL Y. MAGAOAY, Co-Chair



# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The purpose of this Act is to establish  
2 procurement policies and procedures that:

3       (1) Ensure in-state contractors' ability to win awards of  
4 public funds for state contracts;

5       (2) Promote public confidence in the integrity of the  
6 procurement process;

7       (3) Increase openness in the award of competitive sealed  
8 proposals and professional services contracts;

9       (4) Enhance procurement education in the Pacific by  
10 creating a Hawaii procurement institute;

11       (5) Require a pre-bid conference to be attended by all  
12 potential bidders, offerors, subcontractors, and union  
13 representatives, that will allow all interested  
14 parties to raise their protests prior to bidding, so  
15 that any subsequent protests can be resolved quickly  
16 and efficiently pursuant to the timeframe established  
17 in section 103D-701, Hawaii Revised Statutes; and



SECTION 2. Part X of chapter 103D, Hawaii Revised

"§103D- Pre-bid conference. (a) At least fifteen days

(b) The procurement policy board shall adopt rules under chapter 91 to effectuate this section."

"[b]103D-206[b] Additional duties of the administrator of the procurement office. In addition to the duties referred to in section 103D-205, the administrator shall:

- 1 (1) Perform periodic review of the procurement practices  
2 of all governmental bodies;
- 3 (2) Assist, advise, and guide governmental bodies in  
4 matters relating to procurement;
- 5 (3) Develop and administer a statewide procurement  
6 orientation and training program;
- 7 (4) Develop, distribute, and maintain a procurement manual  
8 for all state procurement officials; ~~and~~
- 9 (5) Develop, distribute, and maintain a procurement guide  
10 for vendors wishing to do business with the State and  
11 its counties[-]; and
- 12 (6) Establish and maintain a Hawaii procurement institute,  
13 in cooperation with the University of Hawaii  
14 William S. Richardson school of law and other public  
15 and private entities and/or persons, to promote and  
16 develop a professional acquisition workforce and to  
17 improve and enhance the State of Hawaii's contractor  
18 industrial base through education and training. The  
19 Hawaii procurement institute may:
- 20 (A) Conduct and participate in procurement education  
21 and training for entry level and higher qualified





4 (b) Proposals shall be solicited through a request for  
5 proposals.

8 (d) Proposals shall be opened so as to avoid disclosure of  
9 contents to competing offerors during the process of

13 (e) The request for proposals shall state the relative  
14 importance of price and other evaluation factors.

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(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

20           SECTION 5.   Section 103D-304, Hawaii Revised Statutes, is  
21   amended to read as follows:



5 (c) The head of the purchasing agency shall designate a  
6 review committee consisting of a minimum of three [employees  
7 ~~from the agency or from another governmental body,~~] persons with  
8 sufficient education, training, and licenses or credentials for  
9 each type of professional service which may be required. In  
0 designating the members of the review committee, the head of the  
1 purchasing agency shall ensure the impartiality and independence  
2 of committee members. The names of the members of the review  
3 committee established under this section shall be placed in the  
4 contract file.

15           The committee shall review and evaluate all submissions and  
16 other pertinent information, including references and reports,  
17 and prepare a list of qualified persons to provide these  
18 services. Persons included on the list of qualified persons may  
19 amend their statements of qualifications as necessary or  
20 appropriate. Persons shall immediately inform the head of the  
21 purchasing agency of any change in information furnished which

(d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a ~~[screening]~~ selection committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (c) along with any other pertinent information, including references and reports. The ~~[screening]~~ selection

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3        (e)    The ~~[primary]~~ selection criteria employed ~~[by the~~  
4   ~~screening committee]~~ in descending order of importance shall  
5   ~~[include but not]~~ be ~~[limited to]~~:

- 6 (1) Experience and professional qualifications [~~of the~~  
7 ~~staff to be assigned~~] relevant to the project [~~7~~] type;  
8 (2) Past performance on projects of similar scope for  
9 public agencies or private industry [~~7~~ ~~and~~], including  
10 corrective actions and other responses to notices of  
11 deficiencies;  
12 (3) Capacity to accomplish the work in the required  
13 time [~~7~~]; and  
14 (4) Any additional criteria determined in writing by the  
15 selection committee to be relevant to the purchasing  
16 agency's needs or necessary and appropriate to ensure  
17 full, open, and fair competition for professional  
18 services contracts.

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1 committee may conduct confidential discussions with any person  
2 who is included on the list prepared pursuant to subsection (c)  
3 regarding the services which are required and the services they  
4 are able to provide. In conducting discussions, there shall be  
5 no disclosure of any information derived from ~~proposals~~  
6 ~~submitted by competing offerors. The committee shall provide~~  
7 ~~the head of the purchasing agency with the names of a minimum of~~  
8 ~~three persons who the committee concludes are the most qualified~~  
9 ~~to provide the services required, with a summary of each of~~  
10 ~~their qualifications.]~~ the competing professional service  
11 offerors.

12 (g) The selection committee shall rank a minimum of three  
13 persons based on the selection criteria and send the ranking to  
14 the head of the purchasing agency. The contract file shall  
15 contain a copy of [the criteria established for the selection  
16 and] the [committee's] summary of qualifications for the ranking  
17 of each of the persons provided to the head of the purchasing  
18 agency [by the committee.] for contract negotiations. If more  
19 than one person holds the same qualifications under this  
20 section, the selection committee shall rank the persons in a  
21 manner that ensures equal distribution of contracts among the  
2 persons holding the same qualifications.



6        (h) The head of the purchasing agency or designee shall  
7 negotiate a contract with the first ranked person, including a  
8 rate of compensation which is fair and reasonable, established  
9 in writing, and based upon the estimated value, scope,  
0 complexity, and nature of the services to be rendered. If a  
1 satisfactory contract cannot be negotiated with the first ranked  
2 person, negotiations with that person shall be formally  
3 terminated and negotiations with the second ranked person on the  
4 list shall commence. The contract file shall include  
5 documentation from the head of the purchasing agency, or  
6 designee, to support selection of other than the first ranked or  
7 next ranked person. Failing accord with the second ranked  
8 person, negotiations with the next ranked person on the list  
9 shall commence. If a contract at a fair and reasonable price  
0 cannot be negotiated, the ~~[screening]~~ selection committee may be  
1 asked to submit a minimum of three additional persons for the  
2 head of the purchasing agency to ~~[rank, and]~~ resume negotiations



6       (k) In cases of awards made under this section,  
7       nonselected professional service providers may submit a written  
8       request for debriefing to the chief procurement officer or  
9       designee within three working days after the posting of the  
0       award of the contract. Thereafter, the head of the purchasing  
1       agency shall provide the requester a prompt debriefing in  
2       accordance with rules adopted by the policy board. Any protest  
3       by the requester pursuant to section 103D-701 following  
4       debriefing shall be filed in writing with the chief procurement  
5       officer or designee within five working days after the date that  
6       the debriefing is completed."

19           "§103D-310 Responsibility of offerors. (a) Unless the  
20 policy board, by rules, specifies otherwise, before submitting  
21 an offer, a prospective offeror, not less than ten calendar days  
prior to the day designated for opening offers, shall give

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12           SECTION 8.   Section 103D-1007, Hawaii Revised Statutes, is  
13 repealed.

~~(b) The preference in this section may not be used in combination with any other preference otherwise available to a bidder under state or federal law.~~

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~~(f) If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public works project because of preference awarded by this section, this section shall not apply insofar as its application would preclude or reduce federal assistance for that work." ]~~

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to that extent the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2003.

**Report Title:**

Procurement; Offeror Compliance With State Employment Laws;  
Pre-bid Conference; Procurement Institute; Professional Service  
Providers

**Description:**

Requires that all offerors awarded state contracts be incorporated or organized under the laws of the State or create an in-state division and comply with all applicable state employment laws. Requires a pre-bid conference to be held at least fifteen days prior to submission of bids pursuant to section 103D-302 for construction or design-build projects with a total contract value of \$500,000 or greater, or proposals pursuant to section 103D-303 for projects over \$100,000. Establishes a Procurement Institute to improve and enhance the efficiency, integrity and transparency of the State procurement process. Provides that design professional services may only be procured under section 103D-304, Hawaii Revised Statutes, or pursuant to emergency procurement procedures. Requires that an independent selection committee rank the applying professional service providers according to relevant criteria. Requires the awarding procurement official to negotiate award of the contract with the providers in the rank order set by the committee. Requires equal distribution of contract awards where providers hold the same qualifications or ranking. Repeals state taxpayer procurement preference. (CD1)

